



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN-99-161-50318

Office: Nebraska Service Center

Date:

AUG 30 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

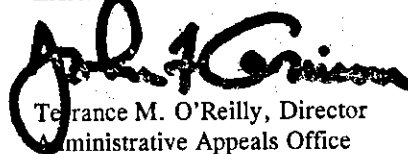
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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prevent clearly unwarranted
invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrence M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The Associate Commissioner has discovered evidence which was not considered prior to rendering his decision, and, pursuant to 8 C.F.R. 103.5(a)(5), the case will be reopened on Service motion. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a graphic designer. The director denied the petition determining that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In its letter dated January 6, 1999, the petitioner stated that the beneficiary's duties include:

the design and production of magazines, brochures, pamphlets, posters, banners, catalogs, and other advertising projects. [He] is also responsible for interacting with the Printers and other Service Bureaus so as to effectively produce materials which communicate the vision of First Assembly of God.

The petitioner submitted photocopies of the beneficiary's transcript and diploma from [REDACTED]. These documents indicate that the beneficiary received a Bachelor of Arts degree with a major in art on May 18, 1996.

On July 13, 1999, the director requested that the petitioner submit additional information. In response, the petitioner stated that:

Because of the nuances of communication and the importance of our task, we have determined that it is essential for the individual designing and producing our printed materials to fully understand and share our commitment to our objectives. Accordingly, we have determined that the person responsible on a continuing basis must be someone we trust and in whom we have confidence.

On appeal, counsel submits another photocopy of the beneficiary's transcript from [REDACTED]. Counsel argues that the petitioner:

needs the skills of the Beneficiary as a graphics designer because integral to the Beneficiary's qualifications as a graphics designer is a set of common shared religious commitments which come from the combination of religious training and experiences . . . The [beneficiary's college] transcript further reflects that the curriculum included course work in religious and theological studies.

Counsel's argument is not persuasive. Counsel states that the beneficiary received "religious training" that qualifies him to work as a graphic designer for the petitioner. Counsel has not provided any detail about what this training entailed or how it qualifies the beneficiary to work as a graphic designer. Counsel refers to the beneficiary's transcript. A review of the transcript reveals that between the fall semester 1991 and graduation in May 1996, the beneficiary enrolled in two classes that may be considered religious in nature, "Biblical Literature & Theology" and "Basic Christian Theology." Two college-level courses over a four-year period cannot be considered equivalent with the completion of a formal theological education. The beneficiary received a degree in "art." The evidence suggests that the beneficiary's artistic skills qualify him to work as a graphic designer. Working as a graphic designer in a church does not equate to working in a religious occupation. As such, the petitioner has failed to establish that the prospective occupation is a religious occupation.

Beyond the decision of the director, the petitioner has failed to establish the beneficiary's two years of continuous religious work experience as required at 8 C.F.R. 204.5(m)(1). Also, the petitioner has failed to establish that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.